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File No. O.L.O.Rs/49

Legal **DEPARTMENT**

A **BRANCH**

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A/816

Subject:—

Opinions under the Law Officers Rules

P:16/E

File No. O.L.O. Rs./49 291-A

Std. Sectt. Slip 24 B a.

C O N T E N T S.

Legal Department, File No.C.L.O.Rs./49

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GOVERNMENT OF BOMBAY.

Legal Department,

Circular No. 6404

Bombay Castle, 8th June 1949.

CIRCULAR.

The attention of Government has been drawn to considerable delay in the disposal of some cases of litigation in Civil Courts in which Government are a party. With a view to minimising such delays, Government are considering the question of a revision of the procedure relating to the institution and defence of suits and other legal proceedings on behalf of Government. As a preliminary measure all District Government Pleaders, are requested to forward to the Remembrancer of Legal Affairs before the 5th of every month particulars of Civil Suits against Government, pending in the respective Civil Courts in the following tabular statement.

Serial Number	No. of Suit and year of institution.	Date of Institution	Whether written statement filed.	Stage at which pending	Remarks.

2. The above statement should be in addition to the monthly return of suits which the District Government Pleaders are required to submit under Rule 170 of the of the Law Officers' Rules. Government have noticed with regret that many District Government Pleaders do not submit the monthly returns and lists as required by Rules 170 and 171. It need not be emphasized that the return under Rule 170 is the first source of information to Government regarding the litigations in which they are involved and should, therefore, be submitted every month without fail. If there are no cases to be entered in the return, it should be sent blank, as is clearly provided in the Rule.

3.

3. The District Government Pleaders are requested to observe strictly the procedure laid down above and forward the necessary statement returns and lists in time.

By order of the Governor of Bombay,

P.M.LAD,

Secretary to Government.

To All District Government Pleaders.

SMT/5.6.

GOVERNMENT OF BOMBAY
Legal Department,
Circular No. 7321.
Bombay Castle, 1st July, 1949.

C I R C U L A R.

Government understands that in the Districts merged with the Province of Bombay under the Extra Provincial Jurisdiction Act several suits and other civil proceedings are pending in the Civil Courts of these States to which the State concerned or Ruler thereof might have been a party. Government is considering the adoption of suitable measures with a view to bringing the procedure as regards the Government litigation in such areas in line with that in the Province of Bombay. As a preliminary measures therefore, the Chief Administrators of all such States are requested in consultation with the Law Officers of the States to forward immediately to the Remembrancer of Legal Affairs the particulars of Civil Suits filed by or against Government in the State Courts before the merger and pending in such Courts in the following tabular statement.

Serial No.	No. of suit	Year of institution	Date of institution	Subject matter of the suit.	Whether written statement filed	Stage at which pending	Remarks.

Similar particulars should also be forwarded in respect of civil appeals or applications and other miscellaneous civil proceedings. As regards suits which may have been filed after the merger or which might hereafter be filed, the Chief Administrators are requested to follow the procedure laid down for the institution or defence of suits in the Law Officers' Rules. The Chief Administrators are requested to treat this as very urgent and to forward the required particulars as early as possible.

By order of the Governor of Bombay,

P.M.LAD,
Secretary to Government.

To

All Chief Administrators.

BNT/5.6.

No.2410-B/49.
GOVERNMENT OF INDIA,
MINISTRY OF LAW.

New Delhi, the 13th July, 1949.

OFFICE MEMORANDUM.

In view of the numerous difficulties felt in arranging for the defence in suits and other legal proceedings against the Dominion of India pending on and instituted on or after the 15th August , 1947, in the Courts in the Dominion of Pakistan and in the light of experience gained since the issue of the office Memorandum of this Ministry, dated the 17th April 1948, the instructions contained in paragraphs 6 and 7 of the said Office Memorandum regarding the defence of such suits and proceedings have been reconsidered and the following fresh instructions are issued for the guidance of Ministries:

(1) In suits and other legal proceedings instituted against the Dominion of India on or after the 15th August, 1947, whether with or without the consent of the Central Government of Pakistan under section 86 of the Code of Civil Procedure for the institution thereof in which appearance has not already been entered, no appearance should be entered and no arrangements for the defence thereof should be made. On service of summons or notice in such suits and proceedings it would be sufficient to send to the Court issuing the summons or notice by Registered Post A.D. an intimation in Form A attached hereto. If ex parte decrees or orders are ultimately passed in such suits and proceedings they should not be satisfied or complied with.

(2) As regards suits and other proceedings instituted on or after 15th August 1947 in which appearance has already been entered and defences taken in accordance with the said office Memorandum, a few of these, selected in consultation with this Ministry, may be

fought.... (P.T.O.

fought out to the conclusion by way of best cases and in the rest of them Counsel for the Dominion of India should be instructed to file a memorandum in Form B attached hereto and thereafter cease taking part therein.

(iii) In the case of suits and other legal proceedings commenced before and pending on the 15th August, 1947, instructions contained in paragraphs 6 and 7 of the said office Memorandum should be followed.

Sd/- D.N.Mamavati.
SOLICITOR TO THE GOVERNMENT OF INDIA.

To

1. All Ministries of the Government of India.
2. The Chief Secretaries of All Provincial Governments.
3. The Chief Commissioner of Delhi/Ajmer-Merwara and Panth Piploda/Andaman and Nicobar Islands/Coorg.

SMT/5.6.

Form "A"

From

.....

.....

To

_____Judge

Court of _____ _____

_____

Subject: Suit/Application No. _____ .

_____

versus

The Dominion of India.

Sir,

I am directed to state that a summons/notice in the above proceedings has been received by _____ I am further directed to state that in accordance with the general rule of International law that no Courts of any State have jurisdiction to entertain suits or proceedings against an independent foreign State, your Court has no jurisdiction to entertain the above suit/proceedings against the Dominion of India which is an independent State. In the circumstances, the Dominion of India does not submit to the jurisdiction of your Court. Any decree or order that may be passed by your Court in the said suit/proceeding will be a nullity.

Your faithfully,

P.T.O.

Form "B".

IN THE COURT OF ——————————.

Suit No./ Application No., ... of 1949.

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VERSUS

The Dominion of India.

The Dominion of India has entered appearance in the above suit/proceeding under protest and has pleaded that this Court has no jurisdiction to entertain this suit/proceeding against that Dominion. The Dominion of India is an independent State and in view of the general rule of international law that no Court of any State has jurisdiction to entertain suits or proceedings against an independent foreign State, this Court has no jurisdiction to entertain the above suit/proceeding against the Dominion of India. The Dominion of India has no intention of submitting to the jurisdiction of this Court and, therefore, will take no further part in these proceedings.

SMT/5.0.

No.1991 - S/48.
GOVERNMENT OF INDIA
MINISTRY OF LAW.

New Delhi, the 17th April, 1948.

SETTLE MEMORANDUM.

Certain question relating to the jurisdiction of the civil courts in the Dominion of Pakistan to entertain suits and other legal proceedings against the Dominion of India were referred to the Advocate General of India for opinion. The following instructions based on his opinion are issued for the guidance of Ministries.

2. In view of the express provisions of the Indian Independence Act, 1947, the courts in Pakistan must recognise the Dominion of India as an independent foreign State. The general rule of international law is that the courts of any State have no jurisdiction over an independent foreign State or an ambassador or other diplomatic agent of such State. After the 15th August 1947, therefore, the Dominion of India cannot be sued at all in any court in Pakistan.

3. Moreover, section 86 of the Code of Civil Procedure, 1908, as in force in Pakistan, provides that any Sovereign Prince or Ruling Chief and any ambassador or envoy of a foreign State may be sued in any competent court in Pakistan, with the consent of the Central Govt. of Pakistan but not without such consent. The expression 'Sovereign Prince' must be deemed, in Counsel's opinion, to include a foreign State as otherwise the result would be to give immunity to an ambassador or envoy of a foreign State but deny it to the foreign State itself. After the 15th August 1948, therefore, the Dominion of India cannot be sued in the courts of Pakistan except with the consent of the Governor General of Pakistan and such consent cannot be given unless the Dominion of India (a) has instituted a suit in the Court against the person desiring to sue it, or (b) by itself or another trades within the local limits of the

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of the jurisdiction of the court or (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon. If no such consent is given or if the consent given is not proper, the Courts in Pakistan can have no jurisdiction to try the suit.

4. Learned Counsel is further of the opinion that absence of such consent would be a bar even to the continuation of a suit pending in a court in Pakistan on the 15th August,1947, as after that date the suit became a suit against the Dominion of India i.e. against a "Sovereign Prince". Article 12 of the Indian Independence (Rights, Property and Liabilities) Order has not the effect of absolving the plaintiff in such a suit from the necessity of obtaining the consent of the Governor General; the Article merely provides for the substitution of the Dominion of India as a party defendant. Article 4 of the Indian Independence (Legal Proceedings) Order, Article 13 of the High Court (Bengal) Order and Article 13 of the High Court (Punjab) Order do not profess to remove the bar of section 86 regarding such suits pending in the courts of Province of Bengal, the Punjab and Assam; they simply deal with question of territorial jurisdiction which may arise by reason of the creation of the new provinces.

5. The same principles apply to suits and other legal proceedings against a Province of India in a civil court of Pakistan, whether such proceedings were pending on or instituted after the 15th August 1947.

6. It is therefore necessary to ascertain whether the consent of the Governor General of Pakistan has been given for the continuation of suits pending on the 15th August 1947 and for the institution of suits commenced after that date in the various courts of Pakistan, and further whether such consent, if given, is proper having regard to sub-section (2) of section 86 of the Code of Civil Procedure, 1908. Whether such consent has been given

or not.....

or not, immunity from the jurisdiction of courts in Pakistan should be claimed, firstly on the ground of complete immunity under international law referred to in para 2. above, and failing that, on the grounds mentioned above with reference to section 86 of the Code.

7. At the same time, it is advisable to oppose the suits not only on the ground of want of jurisdiction but also on merits. In view of the Privy Council decision in Secretary of Baroda State Railway vs. Habib-ul-Haq (65 Indian Appeals 282), defending the suit on merits will not prejudice the plea of jurisdiction or amount to a submission to the jurisdiction of the Court in Pakistan the provisions contained in section 86 of the Code are imperative and must be observed, and having regard to the Public Policy which they serve, they cannot be waived. Nevertheless, by way of abundant caution, appearance should be entered in all such suits, defences on merits taken, and every act and thing done under protest and without prejudice to the plea of want of jurisdiction. If possible, the Courts in Pakistan should be asked to decide the plea of want of jurisdiction as a preliminary issue.

Sd/- D.N. MEHAVARI.
SOLICITOR TO THE GOVERNMENT OF INDIA.

All Ministers of the Government of India.

MT/5.6.

No.12351-76(a)
GOVERNMENT OF INDIA,
Ministry of Defence,
New Delhi, the 18th November 1949.

The Chief Secretaries of all Provincial Governments/
Administrations/Unions of States.

Subject:- Civil Proceedings against the Government of India (Ministry of Defence) - Procedure.

Sir,

I am directed to enclose ten copies of the Army Headquarters letter No. 16399/AG/JS-1., dated the 31st October 1949 outlining instructions for the defence of civil proceedings against the Government of India(Ministry of Defence) for the information of the Government Pleaders of your Province/Administration/Union of States.

Yours faithfully,

Sd/-

(S.N.Vasudev)
Under Secretary to the Government of India.

SNV/3.6.

TELE.DELHI 43228.
MILITRUNKS 345.

OP IMMEDIATE.
No.18899/AG/PS-1.

ARMY HEADQUARTERS,
ADJUTANT GENERAL'S BRANCH,

NEW DELHI DEFENCE HQ PO 31 OCT 49.

TO:

Headquarters,
SOUTHERN COMMAND. (100)
EASTERN COMMAND. (75)
WESTERN COMMAND. (150)

Subject : CIVIL PROCEEDINGS : DEFENCE OF CIVIL SUITS.

Reference R.A.I. Rule 380.

Instances have come to light in which due to lack of proper instructions by local Arm/Service representatives or of collection of evidence for production in a court of law or through ignorance of the provisions of the Indian Limitation Act, cases have been lost or allowed to be decreed against the Govt. causing not only financial loss but also affecting the presenting of the Government.

2. In order to put an end to such cases the following instructions are being issued and the procedure laid down will be adopted with immediate effect.

INITIATION OF LEGAL ACTION IN COURTS.

3. Section 80 of the Civil Procedure Code states inter alia :-

"No suit shall be instituted against the Crown, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office or, in the case of a suit against the Central Govt, a Secretary to that Govt, ... and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

Under administrative arrangements, when a notice of this kind relating to any matte concerning the Army is received by a Secretary to Govt or the Collector of a district, it is at once forwarded to the Adjutant General's Branch (PS1). Hence-forth these notices when received in the Adjutant General's Branch (PS1) will be transferred to the Directorate concerned at this headquarters. The latter will send the original to the Area Headquarters concerned, and one copy each, to their local representatives in Command Headquarters and Area Headquarters, and retain a copy for their record.

ACTION TO BE TAKEN BY THE LOCAL REPRESENTATIVE OF THE ARM/SERVICE IN AN AREA ON RECEIPT OF NOTICES OF SUITS:-

4. On receipt of a notice of suit the local representative of the Arm/Service in an Area Headquarters should give it immediate and careful attention and should prepare a report for submission to the 'A' Branch of Area Headquarters for orders as to whether a suit should be defended. Every effort should be made to submit the report in time to reach the 'A' Branch of Area Headquarters a month before the statutory period of notice expires.

The report should include :-

(a) a full and detailed statement of :-

(i) the circumstances that led to the suit,

(ii) the course it is proposed to adopt, namely whether to admit, compromise or defend the suit and the reasons for the same and ,

(iii) if it is proposed to defend the suit, the grounds on which it is proposed to base the defence and the evidence to be adduced.

(b) If the suit turns on documentary evidence, the originals (or true copies) of the documents relied on by the complainant (if procurable) and by the defence.

(c) Any legal opinion obtained in the case.

If the cause of action is plainly groundless or frivolous, an elaborate report will not be required, but it should be sufficiently comprehensive to enable Area Headquarters/Army Headquarters to form a conclusion in the matter.

Copies of such reports along with enclosures will also be forwarded to the Directorate concerned and the Adjutant General's Branch (MS1) at this headquarters.

INFORMATION TO BE SUBMITTED WHEN THE SUIT HAS BEEN INSTITUTED.

5. The report in para 4 above should be followed as soon as the suit is instituted by a further report which should include :-

(a) A copy of the plaint (and an English translation of it, if necessary) together with copies of any documents or list of documents annexed to the plaint. These copies should be prepared in half margins and notes should be added in the margin (or on separate sheets when necessary) stating whether the allegations are correct or not, and if not, in what respect they are incorrect.

(b) Information as to

(i) the number of the suit,

(ii) the date on which and the court in which, it has been instituted,

(iii) the names of the parties,

(iv) the amount or value of the claim,

(v) Relief claimed,

(vi) the date fixed by the court for the first hearing,

(vii) the date on which the notice of the suit was received,

(viii) Name and designation of the officer of the Arm/Servic detailed for the defence of the suit.

ACTION TO BE TAKEN WHEN THE DEFENCE OF THE SUIT SANCTIONED.

6. (a) When the defence of the suit is sanctioned by the Area Commander, the documents relative to it will be returned to the officer detailed for the defence of the suit. The officer handling the case will then require the local Government Pleader to prepare a defence and give him such assistance as may be required. The defence thus prepared will be submitted for the approval of Area Headquarters and will then be signed and verified by the competent authority (vide I.A.O. 777/48) and presented in the court by the officer who

6. (Contd. .....)

is authorised to do so on behalf of the Government through the Government Pleader. True copies of the defence, of any written statement filed by the plaintiff and the issues framed should be obtained from the Government Pleaders and submitted to the Arm/Service representative in Area Headquarters who in turn will forward copies of the same without delay to 'A' Branch of his Headquarters, the concerned Directorate and the Adjutant General's Branch (PS1) of this headquarters for information.

(b) On sanctioning the defence of the suit Area Headquarters will intimate the fact by signal to the Adjutant General's Branch (PS1) who will arrange for the services of the Government Pleader through the Ministry of Defence.

RESPONSIBILITY FOR THE CONDUCT OF SUITS.

7. The responsibility for the conduct of the suit, defence of which has been sanctioned by the Government of India/Area Commander, rests with the Local Government Pleader.

INSTRUCTIONS TO GOVERNMENT PLEADER.

8. It is the duty of the officer detailed under sub-para 5(b)(viii) by the Arm/Service concerned to see that the Government Pleaders is throughly acquainted with the facts of the case and with the evidence to be adduced in connection therewith.

IMPORTANT POINTS FOR CONTINUAL ATTENTION.

9. The following important points relates to the conduct of suits:-

(a) The averments in a written statement should generally be based in every material point on the proof which can be adduced in support of them.

(b) The evidence whether oral or documentary on which it is intended to rely should be carefully ascertained by the Government Pleader before it is adduced and he should advise as to its admissibility, and probable importance or otherwise, for the purposes of the suit and suggest what evidence, if it be forthcoming, may with advantage be substituted for any which, in his opinion, would be weak or inadmissible.

(c) All the evidence should be assiduously collected and made ready for the day fixed for the hearing. The necessity of making applications for adjournment should be avoided, such applications on behalf of the opposite party will, unless they are made for sufficient reasons, be resisted as tending to prolong the litigation.

(d) All documentary evidence should be ready and should be produced at the first hearing of the suit (i.e. the day fixed for the settlement of issues), as required by Order XIII Rule 1(1) of the Civil Procedure Code.

Applications to the court to accept any documents in evidence at any subsequent stage of the trial, should be avoided except under special circumstances, as such applications cannot be granted without the grant of similar indulgence to the opposite party, which may place Govt. at a disadvantage and should be resisted, as providing occasion for fraud.

(e) Documents filed by the opposite party should be carefully examined at the earliest opportunity, and compared with originals in Government records, or with other papers which may tend to establish or subvert their authenticity.

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RESULTS OF FINDINGS OF THE COURT.

10. As soon as the Court has given its decision on the case the officer detailed for the defence of the suit will communicate the findings of the court by the fastest means to Area Headquarters who in turn will communicate the same to the Directorate concerned and the Adjutant General's Branch (PS1) at this headquarters by signal, he will also obtain two copies (one certified and ununcertified) of the Court's judgement and of its decree, and forward them to Area Headquarters by the fastest means. Headquarters Area will forward the uncertified copy to the Adjutant General's Branch (PS1).

APPEALS.

11. Should a judgement be adverse the officer detailed for the defence of the suit will obtain the views of the Government Pleader who should be requested to give reasons for his views and submit his own views also when forwarding the copies of the same to Area Headquarters. In case the Area Commander does not sanction an appeal under R.A.I. Rule 360, he will forward his comments along with the opinion of the Government Pleadars to the Adjutant General's Branch (PS1) so that the latter can obtain the opinion of the Ministry of Law.

APPEAL BY THE OPPOSITION PARTY.

12. If an appeal is lodged by the opposition party against a decision either entirely or partly in favour of Government, the officer detailed for the defence of the suit, in consultation with the Government Pleader, will immediately obtain an uncertified copy of the memorandum of appeal and submit it to Area Headquarters with his own opinion and that of the Pleaders as to whether the appeal should be defended or not. Headquarters Area will adopt the procedure laid down in para 11 above.

MONTHLY PROGRESS REPORTS.

13. Headquarters Area will send monthly progress reports about all civil suits for the defence of which sanction has been accorded by it to Headquarters Command and the Adjutant General's Branch (PS1) of this headquarters along with their recommending comments.

14. Registered with the Indian Army Statistical Organisation.

Sd/-

ADJUTANT GENERAL.

External Distribution:

Headquarters, Southern Command (Stat.Se Section).
" Eastern Command (Stat. Section).
" Western Command (Stat. Section).
200 copies to : Ministry of Defence (D-6). For distribution to all Govt. Pleaders through the Legal Remembrancers of all Provinces.
Headquarters Military Adviser-in-Chief, Indian State Forces.

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SBT/6.6.